IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CRIMINAL JURISDICTION

PIL Writ Petition No. 4 of 2007
with
Criminal Application No. 1 of 2007

Dr M Furquan, aged 45 yrs
s/o of Mohd, Yaqoob
Adult, B-2/16 Interlock
Delhi 110035

...Petitioner

Versus

1. Jet Airways India Ltd
   through its Chairman
   Mr. Naresh Goyal
   S.M. Centre Andheri Kurla Road
   Mumbai 400059

2. Union of India through
   its Secretary, Ministry of Home
   Affairs, Govt. of India,
   North Block, New Delhi 110001

3. The Vigilance Commissioner
   Central Vigilance Commission,
   CPO Complex INA
   New Delhi 110023

4. The Director, CBI
   Block No. 3 CGO Complex
   Lodhi Road, New Delhi 110003

5. The Secretary
   Civil Aviation Room no. 294
   Rajiv Gandhi Bhavan, B Block
   Safdurjung Airport,
   New Delhi 110001

6. The Director
   Central Intelligence Bureau,

North Block
New Delhi 110001

7. The Director General of Civil
Aviation, Aurobindo Marg
New Delhi 110001

8. The Commissioner of Police
Mumbai, Crawford Market
Phalton Road, Mumbai 400001

9. Sr Inspector of Police
DCB CID Unit 10
Andheri Police Station Compound
Andheri East Mumbai

10. State of Maharashtra
represented by Chief Secretary
Mantralaya, Mumbai 400032 ... Respondents

Mr. Samji Joseph for K T Thomas for the petitioner in the PIL and for respondent no.l in the criminal application No.1 of 2007.

Mr Harish Salve and Mr. Janak Dwarkadas senior advocates with Mr. Amit Desai, Mr. R.J Gagrat, Ms Meenakshi Grover, Ms Sheetal Sabnis, Ms S Vidya and Mr V.N.Kulkarni i/b Gagrats for respondent No.1 in Cri PIL No. 4 of 2007 and Cri Appln No.l/2007

Mr B.A.Desai, Addl. Solicitor General with Ms Usha Kejariwal APP for respondent Nos. 2 to 7 in Cri PIL

Ms Usha Kejariwal APP for State for respondent Nos.8 to 10

CORAM: SWATANTER KUMAR, C.J., &
SMT RANJANA DESAI, J.

Judgment reserved on 13st July , 2007.
Judgment pronounced on 21 August 2007

JUDGMENT(PER SWATANTER KUMAR, C.J.):

The petitioner is stated to be the editor of a leading fortnightly Urdu newspaper by name “Sach Bilkul Sach”, which according to him, has wide circulation and is intended to bring to light of the general public various problems faced by downtrodden and to expose the misdeeds of various persons. The present petition has been filed by him to show the nexus between the underworld Mr. Dawood Ibrahim Kaskar and the Chairman of Jet Airways (India) Limited, as huge investments were received illegally and utilized to accrue assets for the company. It is averred in the petition that huge tainted Indian money is laundered and recycled into business in India, which is generated as a result of smuggling and extortion and similar illegal practices. There was confirmed information of intermittent contact between Naresh Goyal and underworld dons and this requires to be looked into by CBI as it affects the security of the country. There are averments in the petition that the security clearance given to the new Board of Directors of Jet Airways (India) Limited was in absence of clear view from the Civil Aviation Ministry and even the Chairman of Jet Airways did not have security clearance, which is mandatory as per the Rules. The deal of purchase of Sahara Airlines, according to the petitioner, would have costed respondent No.1 company an amount of Rs.2,500 crores approximately, while they had only raised, as per the averments made

in the PIL Petition No.5 of 2006, Rs 1600 crores and this amount was to be used for repayment of debt and the remaining was to be used for further development. After raising money from public issue, the remaining money was acquired out of unholy nexus with the underworld. Problem had also arisen at the time of induction of new Directors into the company as security clearances were needed and the Intelligence Bureau had asked the Ministry of Home Affairs to directly correspond with the Research and Analysis Wing (RAW) and secure their inputs on the affairs of the company. While relying upon certain other newspaper report, particularly of 22nd September 2006, it is averred that an employee of respondent No.1 was arrested for smuggling gold.

The petitioner had earlier filed PIL No.5 of 2006 in this Court which was dismissed vide order dated 27th September 2006, which reads as under:

> "By means of this Public Interest Litigation , the petitioner prays for direction for entrustment of the investigation of the case against respondent No. 7 to the Central Bureau of Investigation (CBI).
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> 2. The petitioner has alleged that the respondent No.7 has unholy nexus with the underworld don Dwood Ibrahim and the said nexus is likely to hamper the national security. According to the petitioner, in the activities in the guise of Jet Airways, the respondent No.7 has bee

able to procure illegal funding.

3. The investigating machinery sets into motion only after the registration of the First Information Report or the complaint of the commission of crime is made as per the provisions of the Criminal Procedure Code.

4. We asked the counsel for the petitioner as to whether any crime has been registered against the respondent No.7 necessitating investigation. His answer was that the petitioner had made complaint to the Director of CBI. We are afraid, such complaint is no complaint under the Code of Criminal Procedure regarding commission of crime. Since no crime has been registered against the respondent No.7 nor any complaint under the Code of Criminal Procedure of commission of crime duly lodged wherein the respondent No.7 is alleged to be involved, in our view, there is no question of directing CBI to investigate into the aspects alleged in the writ petition. How can there be any investigation when there is no crime registered against respondent No.7.

Criminal Writ Petition is misconceived and is liable to be dismissed and is dismissed accordingly".

2. According to the petitioner, he had earlier sent a letter to the Director of CBI dated 30th April 2006 as well as to Intelligence Commissioner and invited their attention necessitating to investigate and clear the, whereafter the above order of the court was passed on the public interest litigation filed by the petitioner. Thereafter he again made application to the Senior Inspector of Police, Sakinaka Police Station on 5th October 2006 as well as made a complaint to the Commissioner of Police, Greater Mumbai. As no inquiry was

conducted and the police did not effect any investigation into the case, the petitioner again filed Public Interest Litigation No.16 of 2006, which was also dismissed vide order dated 30th November 2006, which order reads as under:

> "The petitioner had earlier filed a PIL No.5 of 2006 which was disposed by this court vide order dated 27th September, 2006:
>
> "By means of this Public Interest Litigation, the petitioner prays for direction for entrustment of the investigation of the case against respondent No.7 to the Central Bureau of Investigation (CBI).
>
> The petitioner has alleged that respondent No. 7 has unwholly nexus with the underworld don Dawood Ibrahim and the said nexus is likely to hamper the national security. According to the petitioner, in the activities in the guise of Jet Airways, respondent No. 7 has been able to procure illegal funding.
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> The investigating machinery sets into motion only after the registration of the First Information Report or the complaint of the commission of crime is made as per the provisions of the Criminal Procedure Code.
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> We asked the counsel for the petitioner as to whether any crime has been registered against respondent No. 7 necessitating investigation. His answer was that the petitioner had made complaint to the Director of CBI. We are afraid, such complaint is no complaint under the Code of Criminal Procedure regarding commission of crime. Since no crime has been registered against respondent No.7 nor any complaint under the Code of Criminal Procedure ;of commission of crime duly lodged wherein respondent No.7 is alleged to be involved, in our view, there is no question of directing CBI to investigate into the aspects alleged in the writ petition. How can there be any investigation when there is no crime registered against

respondent No 7..”

In accordance with the observation of the Bench a complaint dated 5th October 2006 has been filed with some of the respondents. The grievance of the petitioner is that despite such complaints no action had been taken thereon. Hence this petition. We are of the opinion that the petitioner has not given enough time to the respondent authorities to consider the action to be taken though serious allegations with wide ramifications have been levelled against the Jet Airways. We accordingly dismiss this petition with liberty to the petitioner to file a fresh petition if no action follows within a reasonable time.”

On 8th December 2006, the petitioner was called by the DCB CID Unit 10 for inquiry,which the petitioner claims to have attended with correspondence and copies of the Court Orders and his statement was also recorded. It is the case of the petitioner that since there was no progress in the matter, and there was culpable passive attitude shown by the police authorities, he has been compelled to file the present PIL praying that investigation of the case be conducted by CBI. On the basis of the averments separate reply affidavits were filed on behalf of the respondent company and the Assistant Commissioner of Police, D.I (East), DCB, COD, Mumbai on behalf of the State of Maharashtra. According to the first respondent specific objection has been taken with regard to the maintainability of

the present petition as public interest litigation. The present petition is stated to be a gross abuse of the process of the court and that the petition has been filed without any cause of action. According to the respondent, in fact the present petition is a device to seek publicity and to raise controversy and to jeopardize the interest of the company at the juncture when the respondent company is on the verge of commencing international flights to United States. While denying all the allegations and averments made in the petition, it is also stated that the petition is founded on incorrect information and unsustained news report, which are contrary to record of the concerned department. There is specific averment that the petitioner has withheld the correct facts from this court.

The petitioner had earlier filed PIL No.5 of 2006, which was dismissed vide order dated 27th September 2006. The allegation that there are links between Dawood Ibrahim Kaskar and respondent company, particularly in relation to acquisition of Sahara Airlines Limited, is absolutely incorrect. The writ petition has been filed motivatedly. It is the case of the respondent company that the company has more than 1,23,175

shareholders and its shares are listed both on the Bombay Stock Exchange and National Stock Exchange. The intention of the petitioner is only to adversely affect the international deals of the company and its reputation in the business circle.

The letters annexed to the petition are stated to be disclosing half facts and the factum is that the respondent company had sought No Objection for security clearance of each of its Directors or Chairman. In terms of clause 4.1.2(b) of the Civil Aviation Department, the respondent company had satisfied all the requirements. In regard to the deal with Sahara Airlines Ltd., it is stated that the company acquired all the shares of Sahara Airlines Ltd in pursuance of a consent award dated 12th April 2007 by the arbitral tribunal consisted of eminent Judges. While denying the nexus on any objections raised by the foreign Governments including US Embassy, which has clarified that the US authorities are completely satisfied, the US Embassy communicated clearance to the respondent company to fly to US and such permission was granted after due checks on 14th November 2006, subsequent to the dismissal of the earlier petition filed by the petitioner. It is averred that in

terms of the award dated 12th April 2007 the Sahara Airlines Ltd was acquired by the respondent company for a sum of Rs.1450 crores and the frivolous allegations made in regard to the acquisition of money by money laundering and other illegal means have been denied and are stated to be baseless. After the demands raised, Rs 900 crores have been paid to Sahara Airlines Ltd, the balance of Rs.550 crores was payable in accordance with the terms of the agreement, in installments.

Copy of the security clearance dated 11th August 2006 granted by the Civil Aviation department, office of the Director General of Civil Aviation, New Delhi, has been annexed to the reply at Exhibit I, while clearance granted by the United State of America Department of Transportation on 14th November 2006 has been annexed as Exhibit 2. While referring to different facets of the permissions granted, in the very opening of the order, it was noticed as under:

> ' By this order we grant the request of Jet Airways (India) Ltd., a foreign air carrier of India, for an exemption to conduct scheduled and carter operations to and from the United States, consistent with the terms of the US India Air Transport Agreement'

The Assistant Commissioner of Police, CID, Mumbai, while denying the allegations made in the writ petition, has stated that the letter of the petitioner dated 5th October 2006 was not for inquiry. Vide letter dated 8th December 2006, the Senior Inspector of Police informed the petitioner to attend the office along with supporting documents. The petitioner attended the office on 29th December 2006 and gave one letter dated 29th December 2006 by way of written submission and his statement was recorded. The petitioner had submitted an unsigned letter dated 12th December 2001 by Anjan Ghosh, Joint Director of IB and thereafter inquiries were made with the Joint Secretary ISI Home Affairs, Government of India, New Delhi. Thereupon it was noticed from the record that vide letters dated 30th June 2007 and 10th July 2007, information was sought from the Government of India and it was found that the Detection Crime Branch was entrusted with the work of collecting intelligence regarding the activities of organised crime syndicate and no

information has come to the Detection Crime Branch relating to the allegations made by the petitioner in the petition. However, Mr. Shahid Faridi, editor of Real Politik, was called upon to produce original of the letter, which he had published, but he could not produce any record to show the genuineness of the said letter.

On 21st June 2007, when the matter came up for hearing before the court, the court had specifically noticed the letter dated 12th December 2001 by the Member of Parliament to the Prime Minister as well as the other correspondence including the letter of Anjan Ghosh which necessitated issuance of the notice. After the parties had filed their respective affidavits and the matter was being heard on 13th July 2007, the Additional Solicitor General, Union of India, upon instructions from the Officer from the Ministry present in court, made a statement before the court which was duly recorded in the order dated 13th July 2007, which reads thus:

> "The affidavit on behalf of the State of Maharashtra, through the Assistant Commissioner of Police D-I (East), DCB, CID, Mumbai has been filed. Same is taken on record.
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> The additional Solicitor General appears for the Union of

> India (IB Law and MHA) and upon instructions from Mr J.P.S. Verma, Deputy Secretary, Ministry of Home, New Delhi, who is present in court, submits that the averments made in the petition are not correct. The Ministry has found nothing objectionable against respondent No.1 or its directors. In fact due clearance has been given to respondent No.1 at different stages, when directors were to be inducted or ceased to be directors of respondent No.1.He further states that the allegations made in the writ petition and the additional affidavit to the effect that funds were provided to respondent No.1 by the underworld persons including Dawood Ibrahim Kaskar would be looked into by the concerned agencies. Nothing incriminating has come to their notice. The allegations are not correct.

The letter of 12th December 2001 was written by Anjana Ghosh, but the original of which, neither of the party has produced on record, and is stated to be secret document. It is a letter written by the Joint Director to the Joint Secretary of the Ministry of Home Affairs mentioning that they have information of intermittent contacts between Naresh Goyal and underworld dons, Chota Shakeel and Dawood Irbahim Kaskar to settle financial issues. All the permissions by the concerned authorities in relation to the security clearance from appointment of Directors to respondent company to the finalisation of its deal with Sahara Airlines are much subsequent to the said letter. During the course of hearing we are informed that they have been disclosed in the regular course of business but still the petitioner chose to remain silent about these documents and has misrepresented the matter before the court. Even

security clearances have been granted by US Government. It is nobody's case before us that permission required from the respective authorities have not been obtained by the respondent company. Be that as it may, it further needs to be noticed that in the earlier petition being PIL 5 of 2006, the petitioner had made similar allegation and while noticing these allegations as made in the petition as well as indicated in the letter dated 12th December 2001, the Bench dismissed the petition as misconceived. We may specifically notice here that the court while dismissing the petition held “In our view there is no question of directing CBI to investigate into the aspects alleged in the writ petition. How can there be any investigation when there is no crime registered against respondent No.7”. That position remains true even as of today.

Further developments are that the petitioner was called by the Senior Inspector of Bombay CID but he could not file any document except his own statement, which was looked into by the authorities. The mater was taken up with the Ministry of Home and ultimately no case has been registered by any of the investigating wings against the respondent company or its Directors. The investigation is a matter, which squarely falls in the domain of the investigating agency and no interference normally is called for in such investigation. Specific

provision of the Cr.P.C. leave no scope for any other interpretation. It is not even averred before us that the inquiry or investigation by the departments was mala fide or was contrary to law.

It also reveals from the records that the letter dated 12th December 2001 was obviously part of the previous petition, being PIL No.5 of 2006, as well. In that very writ petition a document has been filed, providing answer on behalf of the Government of India in the Loksabha to an unstared question on 10th August 2006 relating to the security clearance of respondent company as well as the allegations that they are being finance by the underworld. This question was specifically answered by the competent authority saying “as of now the security clearance of MHA does not indicate any such linkage”. In the counter affidavit filed by the respondent company in the earlier writ petition, these matters had been clarified but in the present petition the petitioner has not placed on record any document to show that the stand taken was factually incorrect or contrary to the stand of the Government.

It is not necessary for us to discuss in any detail the locus standi of the petitioner to file the present petition. Apparently the petitioner has raised general issues, of course, giving a dimension of

national security and lack of will to investigate, while referring to the letter dated 12th December 2001. Since the petition was pending in this court for some time, it is the second petition, which the petitioner has filed, we have considered it appropriate to deal with the matter on its own merits, rather than only on the issue of locus standi.

It is settled principle of law that public interest litigation is a weapon which has to be used with great care and circumspection. The courts have to be careful while entertaining such writ petitions. In the case of Rajiv Ranjan Singh Lalan (VIII) and anr vs Union of India and ors, (2006) 6 SCC 613, the Supreme Court has held as under:-

> "---The learned Solicitor General further submitted that there had been no interference by Mr. Lalu Prasad Yadav or his wife in any of the matters whether in the appointment of Judges or in the change of the prosecutor or in the decision not to file an appeal in the income tax cases. The learned Solicitor General cited T.N.Godavarman Thirumulpad (98) v Union of India ((2006) 5 SCC 28 (Hon. Y.K. Sabharwal C.J. And Arjit Pasyat and S.H. Kapadia, JJ), and submitted that: (SCC p 37, para 23):
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> "Howsoever genuine a cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt....(and that) no trust can be placed by the court on a mala fide applicant in public interest litigation".
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> The learned Solicitor General submitted that

now it is time to give a severe warning and sound alert since these are basic issues which are required to be satisfied by every public interest litigant. He also cited paras 25 and 26 in support of the contention that the writ petition is not maintainable at the instance of the political rivals.

Mr. Ram Jethmalani in regard to the maintainability of the writ petition cited the following decisions:

i) Janata Dal v H.S. Chowdhary (1992) 4 SCC 305) (2 Judges) (SCC p.348, para 109)

"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL, will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but . not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before th court for vindicating an personal grievance, deserves rejection at the threshold";

ii) Dattaraj Nathuji Thaware vs State of Maharashtra, ((2005) 1 SCC 59)(Hon. Arjit Pasayat and Hon. S.H. Kapadia, JJ.) and invited our attention to paras 4,5, 9, 10,12 and 14.

iii)Ashok Kumar Pandey vs State of W.B ((2004) 3 SCC 349 (SCC p 357 para 12):

"12. Public interest litigation is a weapon which has to be used with great care and circumspection and th judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public inquiry and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court

must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motive. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate case, with exemplary costs".

iv) S.P. Gupta v Union of India(1981 Supp SCC 87 (7 Judges) SCC p 219 para 24)

"24. But we must be careful to see that the member of the public who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration., The court must allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. Andre Rabie has warned that 'political pressure groups who could not archive their aims through the administrative process' and we might add, through the political process, 'may try to use the courts to further their aims'. These are some of the dangers in public interest litigation which the court has to be careful to avoid. It is also necessary for the court to bear in mind that there is a vital distinction between locus standi and justifiability and it is not every default on the part of the State or a public authority that is justiciable. The court must take care to see that it does; not overstep the limits of its judicial function and trespass into areas which are reserved to the executive and the legislature by the Constitution. It is a fascinating exercise for the court to deal with public interest litigation because it is new jurisprudence which the court is evolving, a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born".

The courts while exercising jurisdiction and deciding a public interest litigation have to take great care, primarily for the reason that this wide jurisdiction should not become a source of abuse of process of law by a disgruntled litigant. The courts have also held that no efforts should be spared in fostering and developing the laudable concept of PIL and extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed. It has to be a genuine litigation, unmotivated and imposes an obligation upon a litigant to come to the court with true facts and clean hands. Public interest litigations result in taking large court's time, which could not be used by the court for the benefit of common litigant. Thus it is more imperative that petitions which are bona fide and further the public cause alone should be entertained in this category.

In the case of Ashok Kumar Pandey vs State of W.B, 2004(3) SCC 349 the Supreme Court has held that the court has to strike a balance between two conflicting interests, (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive

actions. In this very judgment the Court further enunciated that the principles of credentials of the applicant; prima facie correctness and nature of information given by him and also that the information is not vague and indefinite, are the criteria which the litigant should satisfy. The scope and gravity of the grievance is another relevant consideration for the court to entertain such litigations. If these ingredients are lacking, the Supreme Court further said that the courts should not entertain such public interest litigations. Similar view was also taken in the case of Gurpal Singh vs State of Punjab and ors, 2005(5) SCC 136.

It is also true that a petition involving the question of public interest must be directly relatable to actual interest of the public at large, which has to be a substantial interest. It is not the title of the petition which would satisfy the ingredients of public interest litigation but it is the substance of the petition, which would be the determinative factor.

The documents relied upon by the petitioner in this petition are similar which were relied upon by him in PIL No. 5 of 2006. Thereafter commonly known facts, which a keen public interest oriented

person like the petitioner is expected to know, are published and were even made available in the internet. When called upon by the authorities to produce documents or give details of his suspicion, all that the petitioner did was to tender a copy of the secret letter dated 12th December 2001. In the press report annexed by the petitioner, it was stated that the Ministry of Home Affairs had sought inputs from different agencies. It was thereafter that the no objection was issued by the Ministry and even at the floor of the House of Loksabha a statement was made. Even the Government of United States of America had given clearance to the respondent company as per the communication dated 14th October 2006. All these events are prior to the institution of the present petition and the petitioner, for reason best known to him, failed to disclose an of them in the writ petition. In our opinion, it was expected of the petitioner to give available facts before raising issues of such serious nature relating to national security, the alleged supply of funds by the underworld, its effect on the economy of the country and investigation by CBI into the links of the respondent company to the underworld. In the writ petition the petitioner has made one prayer alone that the CBI should be directed to investigate the matter forthwith. What matter needs to be investigated in face of the permission granted by the different authorities, including the Ministry of Home Affairs and

the inputs by the investigating agencies? The public interest litigation cannot be extended to create what in the opinion of the authority does not exist. We are of the considered view that the petitioner has not come to the court satisfying the basic ingredients of equity and essentials stated in the dictum of the Supreme Court judgment in Ashok Kumar Pandey's case (supra). In the rejoinder filed on behalf of the petitioner except vague denials, nothing of substance has been stated in relation to the permission granted by US Department of Transportation. It is averred that he is not aware of such fact. This attitude of the petitioner is not in conformity with the requirements of law of pleading, particularly when the petitioner has chosen to make serious allegations against respondent No.1. Accepted precepts of law of pleading contemplate definite efforts on the part of the petitioner and to appropriately admit or deny the averments made in the reply affidavits. None of the authorities have, in their affidavits, even vaguely supported the version of the petitioner. On the contrary there are definite decisions of the competent authorities for granting no objection to the respondent company. We see no reason to issue any directions as prayed for by the petitioner in the present petition and the same is dismissed with no order as to costs.

In view of the dismissal of the main petition, no order on the criminal application. However, respondent No. 1 is at liberty to take such steps as are permissible in law.

CHIEF JUSTICE

SMT RANJANA DESAI, J.